

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-123722-08

Date:

July 31, 2008

Legend:

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trust 9 =

Trust 10 =

Trust 11 =

Trust 12 =

Trust 13 =

Trust 14 =

Trust 15 =

Trust 16 =

Trust 17 =

Trust 18 =

State X =

Securities Administrator =

Trustee =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter dated April 18, 2008, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make elections under § 860D of the Internal Revenue Code ("the Code") to be treated as a Real Estate Mortgage Investment Conduit (REMIC).

FACTS:

Each of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 14, Trust 15, Trust 16, Trust 17, and Trust 18 (collectively the "Trusts") is a State X statutory trust created in Year 1. After the Trusts were created and before the Forms 1066 were to be filed, new employees of Securities Administrator ("Administrators") were given responsibility for filing the Forms 1066 with the Service.

Forms 1066 were prepared for each Trust by the Securities Administrator and were sent to the Trustee for signature. After the forms had been signed by the Trustee, they were returned to the Securities Administrator and went to the Administrators who had just assumed the responsibility of filing the Forms 1066. The Administrators believed that the Forms 1066 for these Trusts had been filed with the Service and did not send copies of the Forms 1066 to the Service. With respect to Trust 16, Trust 17, and Trust 18, believing the Form 1066 had been filed for Year 1, the Securities Administrator filed the tax return for Year 2 for these trusts on Date 1.

On Date 2, the Securities Administrator discovered that Forms 1066 for the Trusts were not filed for Year 1. The Securities Administrator filed Forms 1066 for the Trusts' taxable year ending December 31, Year 1 and made REMIC elections for each of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, Trust 10, Trust 11, Trust 12, Trust 13, Trust 15 on Date 3 and for each of Trust 16, Trust 17, and Trust 18 on Date 4.

The Trusts make the following additional representations:

1. The request for relief was filed by the Trusts before the failure to make the regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in the Trusts having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Trusts would have had if the election had been timely made (taking into account the time value of money).
3. The Trusts did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the Trusts requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, the Trusts did not choose to not file the election.

LAW AND ANALYSIS:

Section 860D(b)(1) of the Code provides that an entity which meets the requirements of a REMIC under § 860D(a) may elect to be treated as a REMIC for its first taxable year and that such election must be made on the return for its first taxable year. Section

1.860D-1(d)(1) provides that a qualified entity makes a REMIC election by timely filing, for its first taxable year, a Form 1066 signed by a person authorized to sign that return. This regulation also provides a reference to § 301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) of the regulations provides that the due date and any extensions for filing a REMIC's annual tax return are determined as if the REMIC were a partnership. Therefore, pursuant to § 1.6031-1(e)(2), a REMIC's annual return must be filed on or before the fifteenth day of the fourth month following the close of the taxable year, unless an extension is granted.

Section 301.9100-1(c) of the regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION:

Based on the information submitted and representations made, we conclude that the Trusts have satisfied the requirements for granting a reasonable extension of time to elect REMIC status. Accordingly, the Trusts will be treated as having made timely elections to elect REMIC status for purposes of section 860D(b) and section 1.860D-1(d)(1), for the taxable year ending December 31, Year 1.

This ruling is limited to the timeliness of the REMIC elections of the Trusts. This ruling does not relieve the Trusts from any penalty that they may owe as a result of the failure to timely file Forms 1066. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed

with regard to whether the Trusts meet the requirements of a REMIC under section 860D(a).

No opinion is expressed with regard to whether the Trusts' tax liability is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the provisions of a Power of Attorney currently on file, we are sending a copy of this ruling letter to your authorized representatives.

Sincerely yours,

Alice M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions and Products)